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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 154

UNITED STATES OF AMERICA, PETITIONER

v.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE, DECEASED, AND INDIVIDUALLY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 49–59) is reported in 95 F. (2d) 744.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 28, 1938. (R. 59.) The petition for writ of certiorari was filed June 28, 1938, and granted October 10, 1938. (R. 61.) The

jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the provisions of Section 305, World War Veterans' Act, 1924, are applicable to effect a revival and continuance of lapsed yearly renewable term insurance to the date of a total permanent disability occurring after July 2, 1927, despite the provisions of Section 301 of that Act, as amended, that all yearly renewable term insurance should cease on that date, with certain specified exceptions which did not include continuance of insurance under Section 305.

STATUTES INVOLVED

Section 301 of the World War Veterans' Act, 1924, as amended, as contained in U. S. C., Title 38, Sec. 512, provides in part as follows (see also U. S. C., Supp. III, Title 38, Sec. 512):

> Except as provided in the second paragraph of this section, not later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing

at age sixty-two, five-year level premium term, and into other usual forms of insurance, * * *.

All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: *Provided, however*, That the director may by regulation extend the time for the continuing of yearly renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured.

In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to reinstate or convert said term insurance as hereinbefore provided: *Provided*, That where the time for conversion has been extended under the second paragraph of this section because of the mental condition or disappearance of the in-

sured, there shall be allowed to the insured an additional period of two years from the date on which he recovers from his mental disability or reappears in which to convert.

* * * * * * * * This section, as amended, shall be deemed to be in effect as of June 7, 1924.

Section 305 of the World War Veterans' Act, 1924, as amended, as contained in U. S. C., Title 38, Sec. 516, provides in part:

> Where any person has, prior to June 7, 1924, allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, chapter 16, Forty-first Statutes, page 371, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the Veterans' Administration is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per

centum per annum compounded annually in installments as provided by law: * * *.

Other pertinent matter appears in the Appendix, *infra*, pp. 43–65.

STATEMENT

This suit was originally brought by John F. McClure in the District Court of the United States for the Eastern District of Washington, to recover total permanent disability benefits under a contract of war risk (yearly renewable) term insurance. (R. 51.)[1] McClure died, and the respondent, Kathleen McClure, then filed an amended complaint (R. 2–6), as administratrix of his estate and in her individual capacity, to recover both total permanent disability and death benefits (R. 5–6), alleging, in the alternative, that he was totally and permanently disabled at the time of his discharge from the military service, January 29, 1919, before he ceased paying the premiums due on the insurance, or if not then so disabled, that he became so later, while the insurance was in force, presumably under the provisions of Section 305 of the World War Veterans' Act, 1924, *supra* (R. 3–4).

The Government, in its answer, denied all of the allegations in the amended complaint except those relating to the military service of the insured and the appointment of respondent as administratrix (R. 7–9), but at the trial of the case before the court, without a jury, pursuant to stipulation (R.

[1] The record does not contain the original complaint.

28), both parties submitted proposed findings of fact and conclusions of law (R. 9–17, 22–28), from which it appears that there was no substantial dispute as to the facts, including the fact that the insured became totally and permanently disabled in 1929 (R. 14, 15, 28, 26), and that only issues of law were presented including the issue as to whether, in view of the provisions of Section 301, *supra*, for the termination of yearly renewable term insurance on July 2, 1927, Section 305, *supra*, effected a revival and continuance of the insurance involved herein to the date of total permanent disability in 1929. (See plaintiff's proposed finding No. VII (R. 11, 24) and defendant's proposed finding No. VIII (R. 16, 27.)*

The trial court entered findings of fact (R. 28–30) to the effect that the insured was granted a policy of war risk term insurance in the sum of $10,000, on which premiums were paid to include the month of January, 1919; that he became totally and permanently disabled December 1, 1929; that on the date he permitted his policy to lapse for failure to pay the premium then due he was suffering from a "compensable disability" for which compensation was due and uncollected; and that on the date of total permanent disability there was due

* The Government also urged by its proposed finding No. VII (R. 15–16, 27) that Section 305 was repealed by the Economy Act of March 20, 1933 (U. S. C., Title 38, Sec. 717), but abandoned this contention in the Circuit Court of Appeals (R. 59).

and uncollected compensation in an amount sufficient to have paid all the premiums due on the policy since the date of its lapse (R. 29).

At the same time the court entered conclusions of law to the effect, *inter alia*, that respondent was not entitled to recover (R. 30), basing its decision upon the ground that the insurance was not revived and continued under Section 305, *supra*, beyond July 2, 1927, in view of the provisions of Section 301, *supra*.* Judgment was accordingly entered for the Government (R. 19–20), and respondent appealed, assigning error to all rulings of the trial court adverse to her (R. 36–40).

The Circuit Court of Appeals for the Ninth Circuit reversed, holding (R. 49–59) that Section 305 is not limited by Section 301, upon the grounds (1) that there is no conflict or relation between the two sections; that Section 305 does not extend or renew insurance, or continue it in force, but merely provides for the payment of a gratuity in the form of insurance; (2) that if it were assumed that a conflict exists between Sections 301 and 305, the provisions of the latter are special, in that they provide for payment of benefits under special circumstances, and therefore must be held to control, as against the general declaration in Section 301 that

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* This is shown by the court's refusal (R. 18, 31) of the plaintiff's proposed finding No. VII (R. 11, 24) and the acceptance (R. 17–18, 31) of the defendant's proposed finding No. VIII (R. 16, 27).

yearly renewable term insurance should cease on a certain date; (3) that an estimate of the cost to the Government of proposed amendments to Sections 301 and 305, furnished to Congressional Committees in 1926, by the Director of the Veterans' Bureau, in which he expressed an assumption to the effect that the termination of yearly renewable term insurance by Section 301 would preclude a revival and continuance of such insurance under Section 305 until total permanent disability or death occurring thereafter, should be denied significance because the estimate embodying this administrative interpretation was not incorporated in "the report of the committee", and because, in any event, it did not "purport to state an administrative practice"; (4) that amendments to Sections 301 and 305 in 1928 did not indicate Congressional adoption of the administrative interpretation, repeated at that time in an administrative opinion,*

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* The Government filed in the Circuit Court of Appeals a copy of an opinion rendered by the General Counsel of the Veterans' Bureau, approved by the Director in February, 1928, to the effect that Section 305 was inapplicable to revive yearly renewable term insurance when the total and permanent disability or death of the insured occurred subsequent to July 2, 1927, the date fixed for the termination of such insurance by Section 301. The copy of this opinion was accompanied by a certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, to the effect that the opinion was a precedent which had been applied, without modification, in administrative practice under Section 305, since it was rendered. The opinion and the Administrator's certificate appear in the Appendix, *infra*, pp. 57–62.

because, the court stated, that opinion was rendered only shortly prior to the passage of the Act containing the amendments; (5) that a long continued administrative practice requiring judicial consideration was not shown,* and that, in any event, the statutory provisions involved are too clear to permit resort to administrative practice.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that a right to benefits under Section 305, World War Veterans' Act, 1924, may exist in a case involving a lapsed policy of yearly renewable term insurance where the total and permanent disability of the insured occurred after July 2, 1927, the date fixed for the termination of such insurance by Section 301 of that Act, as amended.

(2) In holding that Section 305 is not limited by the provisions of Section 301 for the termination of yearly renewable term insurance on July 2, 1927.

(3) (a) In holding that the benefits provided by Section 305 were gratuities and not founded upon contracts of insurance and were not intended to be subject to the limitations applicable to such contracts contained in other sections of the World War Veterans' Act, including Section 301.

(b) If the court was correct in so holding, in failing to hold further that the District Court was without jurisdiction of respondent's suit, since

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* See footnote 4, *supra*.

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(2) In holding that Section 305 is not limited by the provisions of Section 301 for the termination of yearly renewable term insurance on July 2, 1927.

(3) (a) In holding that the benefits provided by Section 305 were gratuities and not founded upon contracts of insurance and were not intended to be subject to the limitations applicable to such contracts contained in other sections of the World War Veterans' Act, including Section 301.

(b) If the court was correct in so holding, in failing to hold further that the District Court was without jurisdiction of respondent's suit, since

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* See footnote 4, *supra*.

Section 19 of the World War Veterans' Act authorizes suit only upon claims "under a contract of insurance."

(4) In misapplying well established principles of interpretation to Sections 301 and 305.

(5) In disregarding the administrative interpretation of Sections 301 and 305 and the long continued administrative practice pursuant to such interpretation.

(6) In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

I

The court below should have held that the trial court was without jurisdiction if it was correct in its holding that Section 305, World War Veterans' Act, provides a benefit which is not insurance and for that reason not subject to Section 301 of that Act, which provides that all yearly renewable term insurance should cease on July 2, 1927.

There is no authority for the respondent's suit unless it is contained in Section 19, World War Veterans' Act, which authorizes suit in the event of disagreement as to claim "under a contract of insurance." A number of cases have held in effect that the benefit provided by Section 305 is to be treated as insurance for the purposes of suit under Section 19 and in two of these cases petitions for writs of certiorari were denied. *United States* v. *Ellison*, 74 F. (2d) 864 (C. C. A. 4th), certiorari

denied, 295 U. S. 759; *United States* v. *Sellers*, 75 F. (2d) 623 (C. C. A. 5th), certiorari denied, 295 U. S. 763. The decision of the court below is contrary to these cases in so far as it held that the benefit provided by Section 305 is not insurance, and if correct in this respect, the court should have affirmed the judgment of the trial court for lack of jurisdiction.

II

The respondent's claim that the total permanent disability of the insured in 1929 matured a contract of yearly renewable term insurance which lapsed in 1919 because of the provisions of Section 305, is unfounded because:

(a) Section 301 unequivocally declares that all such yearly renewable term insurance shall cease on July 2, 1927, with exceptions expressly made exclusive, and these exceptions do not include a revival of insurance under Section 305.

(b) Since the benefit provided by Section 305 must be treated as insurance if the instant suit is not subject to dismissal for want of jurisdiction (see Summary I, *supra*) it is obviously subject to the provisions of Section 301 in one respect and there is no apparent reason why it should not similarly be subject thereto in all other respects.

(c) Section 305 was intended to give the benefits of matured insurance to veterans who had died or become totally permanently disabled when they had been denied the opportunity to continue such in-

surance without lapse or to reinstate it because of the noncollection of compensation for war-time injuries. But Congress expressly provided in Section 304 against the reinstatement of yearly renewable term insurance after July 2, 1927 (a provision comparable to that of Section 301 against continuance) and made no exception in favor of veterans whose compensation was uncollected on July 2, 1927.

(d) The fact that there is no statutory provision precluding the continuance to the date of death or total permanent disability occurring after July 2, 1927, of *converted* insurance under Section 305, provides no basis for implying an exception under Section 305 to the prohibition in Section 301 upon the continuance of *yearly renewable term* insurance beyond July 2, 1927. Section 305 was obviously not intended to confer a uniform benefit upon all veterans. This was recognized by this Court in *United States* v. *Madigan*, 300 U. S. 500, where the payment of a substantially greater sum than was allowed in that case would have resulted had the veteran's lapsed converted insurance been in the form of yearly renewable term insurance when it lapsed. Moreover, as is also indicated in the *Madigan* decision, *supra*, a restriction upon the revival of converted insurance, progressively severe with the passage of time, has from the first inhered in the revival provisions of the statute and in the premium requirements of converted policies.

(c) The Government's position is further supported by the legislative history of the provisions in question, which shows that Congress has always regarded yearly renewable term insurance as temporary and that this policy was well established when the revival provisions were made prospectively effective. Moreover, since an intention to continue yearly renewable term insurance under the revival provisions beyond the date fixed for its termination is not disclosed either upon the face of the statute or in the legislative history, no amendment to the section limiting the continuance of such insurance should be implied in the enactment of the revival provisions, particularly since this would involve the modification of a well established policy.

The legislative history further shows that the reinstatement and revival provisions had their inception at the same time and in the same section and were complementary to each other, thus supporting the Government's contention that these provisions were intended to be coterminus and that such intention is effected by the specific provisions prohibiting the reinstatement of yearly renewable term insurance after July 2, 1927, and the specific provisions prohibiting the continuance of such insurance after that date.

The legislative history shows also that Congress has acquiesced in an administrative interpretation of the provisions in question identical with that urged by the Government and under circumstances

which have amounted to a legislative adoption of that interpretation.

(f) The statutory provisions here in question do not contradict each other but are entirely harmonious in themselves and with respect to other pertinent provisions of the statute; but if, contrary to our view, it be considered that there is conflict, the specific provision against the continuance after July 2, 1927, of the temporary contracts granted in yearly renewable term insurance should control over the general provisions embodied in Section 305 for the revival of all forms of lapsed insurance.

ARGUMENT.

I

IF THE COURT BELOW WAS CORRECT IN HOLDING THAT THE BENEFIT PROVIDED BY SECTION 305 IS A GRATUITY NOT SUBJECT TO THE PROVISIONS OF SECTION 301, RELATING TO INSURANCE CONTRACTS, IT MUST FOLLOW THAT THE TRIAL COURT LACKED JURISDICTION UNDER SECTION 19, AUTHORIZING SUITS ON SUCH CONTRACTS

The opinion of the court below presents preliminarily a jurisdictional question because of its holding that the benefit provided by Section 305 of the World War Veterans' Act, 1924, *supra*, is a gratuity not subject to the provisions of Section 301 of that Act, *supra*, relating to insurance contracts. If this holding is correct, it would logically follow that the benefit in question is to be treated also as a gratuity not subject to other provisions of the World War Veterans' Act relating to contracts of insurance, including Section 19 of the Act, under

which the instant suit was brought, and that therefore the trial court was without jurisdiction.

Section 305, *supra*, provides that where insurance has lapsed and the insured dies or becomes totally permanently disabled under certain prescribed circumstances, his insurance "shall not be considered as lapsed" and shall be payable subject to the deduction of the premiums (and interest thereon) which, if paid, would have continued it in force to the date of maturity. In other words, this section provides that the insurance, though lapsed in fact, shall be treated as continuing in force.

Section 301, *supra*, clearly prohibits the continuance of yearly renewable term insurance after July 2, 1927, with certain exceptions not applicable here. It contains provisions that "not later than" that date all such insurance "shall be converted" into other forms, and that all such insurance "shall cease" on that date. Despite this clear language the court below held that Section 305 authorized the payment of benefits in the instant case, in which the yearly renewable term insurance lapsed in 1919, although the insured did not become totally and permanently disabled until 1929. The court reached this conclusion upon the ground that Section 305 bears no relation to Section 301, since Section 305 "does not extend or renew insurance with the correlative rights of insurer and insured," but merely "provides for the payment of a gratuity in

the form of insurance." (R. 33.) Thus the court held, in effect, that the benefit provided by Section 305 does not arise under a contract of insurance and is not to be so treated.

The position of the court below places the respondent upon the horns of a dilemma, in so far as the jurisdiction of the trial court in the instant case is concerned. Section 19 of the World War Veterans' Act, as amended (U. S. C., Title 38, Sec. 445), confers jurisdiction upon a District Court only in the event that there has been a disagreement "as to claim * * * *under a contract of insurance* * * * between the bureau and any person or persons claiming thereunder." [Italics ours.] The Government has heretofore often urged that jurisdiction was lacking in the District Courts of suits claiming benefits under Section 305 for the reason that a claim for such benefits is not a claim under a contract of insurance, but the courts have uniformly rejected this contention and in two cases this Court denied petitions for writs of certiorari to review such a holding. (*United States* v. *Ellison*, 74 F. (2d) 864, 868 (C. C. A. 4th), certiorari denied, 295 U. S. 750; *United States* v. *Sellers*, 75 F. (2d) 623 (C. C. A. 5th), certiorari denied, 295 U. S. 763; *United States* v. *Knott*, 69 F. (2d) 907 (C. C. A. 6th); *United States* v. *Hendrickson*, 53 F. (2d) 797 (C. C. A. 10th); *United States* v. *Vance*, 48 F. (2d) 472 (C. C. A. 8th).) Moreover, in *United States* v. *Weaver*, 86 F. (2d) 372 (C. C. A. 4th), it was held that the

benefit conferred by Section 305 is not a gratuity but is contractual in nature and hence is protected by the Fifth Amendment. Cf. *United States* v. *Jackson*, 89 F. (2d) 572 (C. C. A. 4th), holding a similar statutory benefit to be contractual in nature.[6]

If the court below is correct in holding that the benefit provided by Section 305 is a gratuity, not founded upon a contract of insurance, and not to be so treated, with the result that Section 301, relating to such contracts, has no application, then it follows necessarily, we think, that Section 19, authorizing suit only upon a claim "under a contract of insurance," is also inapplicable for precisely the same reasons. Since this suit was brought under Section 19 (R. 5) and there was no authority to sue the United States for any benefits provided by the World War Veterans' Act except under that section,[7] the court below should logically

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[6] The decision was affirmed by this Court on other grounds. (302 U. S. 628.)

[7] Section 5 of the World War Veterans' Act, as amended (U. S. C., Title 38, Sec. 426), provides that the Administrator of Veterans' Affairs "shall decide all questions arising under this Act; and all decisions of questions of fact and law affecting any claimant to the benefits of Titles II, III or IV of this Act [which include Section 305] shall be conclusive, except as otherwise provided herein." The only provision of the Act which authorizes suit against the Government is contained in Section 19. It therefore follows that no other Act may be invoked to permit suit for the benefit provided by Section 305. Cf. *Silberschein* v. *United States*, 266 U. S. 221.

have held that the District Court was without jurisdiction.*

II

SECTION 301 PREVENTS THE CONTINUANCE OF THE YEARLY RENEWABLE TERM INSURANCE HERE INVOLVED BEYOND JULY 2, 1927, AND HENCE PREVENTS THE CONTINUANCE OF SUCH INSURANCE UNDER SECTION 305 TO DECEMBER 1, 1929, WHEN THE INSURED BECAME TOTALLY PERMANENTLY DISABLED

The respondent's claim is based upon a contract of yearly renewable term insurance which lapsed for the nonpayment of premiums in 1919. The court below held that, despite the lapse, benefits were payable from December 1, 1929, when the insured became totally permanently disabled. It relied upon Section 305, which, as previously stated, provides that insurance, though lapsed in fact, shall under certain circumstances be treated as continuing in force. This holding is, we submit, incorrect for a number of reasons.

(a) Section 301 *supra*, pp. 2–4, on its very face prevents the continuance under Section 305 of the yearly renewable term insurance in the instant case beyond July 2, 1927, because it expressly provides for the termination of such insurance on that date, contains specific exceptions which do not include continuance of insurance under Section 305, and unequivocally directs that these exceptions

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* The failure to so hold would, of course, be reviewable by this Court, even though the question was not raised or considered in the court below. *United States* v. *Corrick*, 298 U. S. 435, 440; *United States* v. *Griffin*, 303 U. S. 226, 229.

shall be exclusive. The first paragraph of Section 301 expressly declares that *"except as provided in the second paragraph of this section"* all yearly renewable term insurance shall be converted into other forms of insurance "not later than July 2, 1927", and the second paragraph of the section similarly provides that subject to certain exceptions all such insurance "shall cease on that date."

The exceptions, as stated in the latter paragraph and amplified in the third paragraph, include only cases (1) where the insurance matured by total permanent disability on or before July 2, 1927, and the insured has been "declared to be no longer permanently and totally disabled" after that date, and (2) where conversion of the insurance on July 2, 1927, was impracticable or impossible due to the mental condition or disappearance of the insured,—extensions of the time limitation upon the continuance of yearly renewable term insurance being allowed in each of these two classes of cases. But aside from the fact that Section 301 expressly provides that the exceptions contained in it shall be exclusive, if Congress had intended that the revival and continuance of yearly renewable term insurance under Section 305 should constitute another exception, it may be assumed that it would have been added to those contained in Section 301. The omission to make such a provision is sufficient alone, it is submitted, to preclude any implication that such an exception was intended.

The fact that Section 305, on its face, contains language which permits it to operate prospectively with respect to maturity of yearly renewable term as well as converted insurance provides no support for the view of the court below. This fact is wholly consistent with the time limit upon the continuance of yearly renewable term insurance, since there remained as of June 7, 1924, when Section 305 was enacted, a period of more than two years within which Section 305 might operate prospectively to mature yearly renewable term insurance. (See Appendix, *infra*, p. 48.)

(b) It must be held that Section 301 controls Section 305, in part at least, unless veterans receiving the disability benefits of yearly renewable term insurance under Section 305, who are declared to be no longer totally permanently disabled, are to be deprived of the privilege granted by the exception in Section 301 permitting such yearly renewable term insurance to be continued under these circumstances beyond July 2, 1927. The holding of the court below that there is no relation between Sections 301 and 305 for the stated reason that the former deals with insurance while the latter provides merely a gratuity, not only places respondent upon the horns of a dilemma in relation to the trial court's jurisdiction of the instant case, as previously stated, but is also contrary to a long continued administrative practice beneficial to veterans. Where veterans receiving disability benefits under Section 305, in cases involving yearly renewable

term insurance, have been declared to be no longer totally permanently disabled, the Veterans Administration has from the beginning consistently followed the practice of recognizing that the exception in Section 301 to the time limit on such insurance is applicable and has permitted the continuance of the insurance beyond July 2, 1927. (See letter from the Administrator of Veterans Affairs to the Solicitor General, dated November 14, 1938, Appendix, *infra*, pp. 62–65.) Since this exception to the time limitation in Section 301 is applicable to cases arising under Section 305, there is no apparent reason why the time limitation itself should not also be applicable to such cases.

(c) That Congress intended the time limitation in Section 301 to be applicable to the *revival* of yearly renewable term insurance under Section 305 is further indicated by the fact that it placed a similar limitation upon the *reinstatement* of such insurance. Section 304 of the World War Veterans' Act, as amended (Appendix, *infra*, pp. 53–64), provides in this connection that "except as provided in Section 301 of the World War Veterans' Act, as amended,* no yearly renewable term insurance shall be reinstated after July 2, 1927." The basis of providing for the revival of insur-

*This exception relates to cases where veterans whose insurance matured by reason of total permanent disability prior to July 2, 1927, have thereafter been declared to be no longer so disabled. (Section 301, World War Veterans' Act, *supra*, p. 3.)

ance under Section 305 is the fact that an insured who has not received the compensation due him, has thus presumably been denied the opportunity of continuing his insurance or of reinstating it under Section 304. *United States* v. *Madigan*, 300 U. S. 500, 504. His right to reinstate yearly renewable term insurance, however, was limited to July 2, 1927, despite the fact that he may similarly have been denied the opportunity of reinstating it prior to that date for want of the compensation due him. Under the circumstances we submit that there is no reason whatever why the reinstatement of yearly renewable term insurance should have been thus limited, and the revival of such insurance should be left with no limitation whatever, as held by the court below.

Moreover, Section 305 is based not only upon the presumption, as previously indicated, that if the compensation due an insured had been paid to him it would have been used to continue his insurance or if it had lapsed to reinstate it (thus having the purpose of doing for the insured what he might have done for himself if he had received the compensation), but also upon the further presumption that the Government and not the insured was responsible for the fact that the compensation was unpaid. See *United States* v. *Madigan, supra*, *United States* v. *Hendrickson*, 53 F. (2d) 797, 799 (C. C. A. 10th). However, Congress no doubt recognized that this latter presumption would be

limited in its duration and, therefore, intended that there should be a time limit upon revival under Section 305. Compensation is payable for disabilities incurred during service in the World War (Section 200, World War Veterans' Act, U. S. C., Title 38, Sec. 471) and it is reasonable to assume that Congress recognized that as the period of service became more remote the number of pending claims would diminish and the presumption that compensation was unpaid because of delay on the part of the Government in acting upon claims would progressively lose its strength until finally the opposite presumption would arise that the compensation was unpaid only because of delay on the part of the veteran in claiming it or in supporting his claim by satisfactory evidence. It is submitted that since the reasons for the revival of term insurance would thus disappear in the course of time, Congress, by Section 301, intended to place a time limit upon revival coinciding with the limitation upon the reinstatement of such insurance. It was no doubt anticipated that by that time the meritorious claims for compensation would have been presented and payments commenced on them.

Without the time limit on revival which, we submit, Congress has imposed, an anomalous result would have obtained. The revival of insurance upon death or total permanent disability occurring after July 2, 1927, would have given to an insured, whose compensation remained uncollected, a benefit

which he could not have obtained for himself if the compensation had been paid. For example, if an insured whose term insurance had lapsed, collected all of the compensation due him prior to July 2, 1927, he might have used it to reinstate the insurance, but he could not have continued it beyond July 2, 1927, because of the provisions of Section 301; if he collected all of the compensation due him after July 2, 1927, and prior to becoming totally permanently disabled, he could not have used it to reinstate the term insurance because of the provisions of Section 304.

(d) The first to which the court below alluded (R. 54), that no such limitation as that upon yearly renewable term insurance was placed upon the revival of converted insurance, provides no reason for concluding that Congress intended, in making the provisions for revival of insurance prospectively effective for the first time by the Act of March 4, 1923, or in subsequent enactments of those provisions (Appendix, *infra*, pp. 44, 45, 50, 52), to depart from the policy already well established by statute that yearly renewable term insurance should be temporary only, but that converted insurance should have a permanent status.[10] On the contrary, this fact merely shows an intention to provide for revival of all forms of insurance, without attempting to avoid differences in results which arise from differences in the terms of the insurance contracts

[10] See discussion, *infra*, pp. 31–34.

or in the statutory provisions relating to them. It is merely a result of the difference in status between the two forms of insurance (term and converted) and has the same significance as the fact that more term than converted insurance may be revived by a given amount of uncollected compensation because of the difference in premium rates between the two kinds of insurance, or the fact that more insurance may be revived under an ordinary life policy than under an endowment policy or any of the other forms of converted insurance with a higher premium rate.

The court below, in relying upon the fact that converted insurance is not limited in its prospective revival as indicating an intention on the part of Congress that the revival of yearly renewable term insurance should be without time limitation in its prospective effect, wholly ignores the decision of this Court in *United States* v. *Madigan*, 300 U. S. 500, which recognized that the rights of veterans under Section 305 were subject to the terms and conditions of the various forms of insurance contracts to which that section applies. In that case the veteran, whose term insurance had been converted and whose converted insurance had lapsed under circumstances permitting its revival in the sum of $2,170.92, sought the revival of term insurance in the larger sum of $6,469.73, to which he would have been entitled had his term insurance

been permitted to lapse at the time when, instead, he converted it."[11] This Court reversed the judgment of the Circuit Court of Appeals, awarding the larger sum sought, and held that (p. 506) "the right of respondent to revive his insurance is limited to the lapsed twenty-payment life policy." Thus it was recognized that Congress did confer upon veterans, under Section 305, benefits which varied in amount depending, in part at least, upon the form of insurance to which it applied; that it intended the provisions of Section 305 to be read in the light of the differences in premium rates of the various forms of insurance prescribed under the authority of the World War Veterans' Act. (Section 301, *supra*, pp. 2–3.) In the instant case it is the temporary character of the yearly renewable term insurance prescribed by that Act, as previously stated, which precludes the revival and continuance of such insurance after July 2, 1927, and thus, incidentally, favors the veteran whose insurance was converted prior to its lapse—in that respect reversing the situation in the *Madigan* case, where conversion resulted in the payment of a lesser benefit.

Furthermore, there would seem no reason to suppose that, when the provisions for revival were first given a prospective effect by the Act of March 4, 1923 (Appendix, *infra*, p. 45), Congress antici-

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[11] See Government's brief in the *Madigan* case, p. 4, footnote 1.

pated that the amount of converted insurance which might be subject to revival under that Act would be large enough in comparison with the amount of term insurance revivable to justify placing any other limitation on the revival of the converted insurance than that which inhered in the revival provisions themselves [11] and the terms of the converted policies.[12]

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[11] The Act of March 4, 1923, first providing for the prospective revival of insurance required the following conditions: (1) Lapse of insurance prior to March 4, 1923 (2) at a time when the veteran was suffering from a compensable disability (3) for which compensation was uncollected (4) followed by death or total permanent disability at a time when compensation remained uncollected (5) in sufficient amount to cover all of the unpaid premiums upon the insurance to be revived. (See Appendix, *infra*, pp. 44–45.)

[12] The different forms of converted insurance authorized by Section 301 have widely varying premium rates, all of which are substantially larger than the premium rate upon yearly renewable term insurance. For example, at age 21 the premium on $10,000 yearly renewable term insurance would be $6.50 per month (Bulletin No. 1, Treasury Department, Regulations & Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1233, 1234), whereas the premium upon each of the other forms and the excess over the term premium would be as follows:

Form of Converted Insurance	Monthly Premium Rate	Excess Each Month Over Term Premium Rate
Ordinary Life	$11.70	$5.20
30-Payment Life	14.30	7.80
Endowment at Age 62	14.30	7.80
20-Payment Life	17.90	11.40
20-Year Endowment	20.80	14.30
20-Year Endowment	32.30	26.80

There was available to Congress information to the effect that while forty billion dollars of yearly renewable term insurance had been issued during the World War,[14] less than one and one-quarter billion dollars of converted insurance had been issued prior to March 4, 1923.[15] Moreover, revival was limited to insurance which had lapsed prior to that date, and while approximately thirty seven billion dollars of yearly renewable term insurance had lapsed prior to March 4, 1923, only about 1/214 as much converted insurance had lapsed as of that date.[16] Furthermore, compensable disability at the time of the lapse of insurance was a condition to revival, and Congress must have recognized it as unlikely that veterans whose earning power was thus reduced by disability [17] would have converted

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[14] See *Lynch* v. *United States*, 292 U. S. 571, 576, footnote 2.

[15] The Annual Report of the Director, United States Veterans Bureau, 1923, p. 659, shows that as late as June 30, 1923, the insurance converted amounted to $1,216,064,021.

[16] The Annual Report of the Director, United States Veterans Bureau, 1923, p. 658, shows that as of June 30, 1923, the aggregate sum of all forms of Government insurance in force was less than $3,000,000,000. According to information received from the Veterans Administration, the amount of converted insurance lapsed as of March 31, 1923, was only $172,530,079. Thus approximately $37,000,000,000 of yearly renewable term insurance was in a state of lapse.

[17] A disability to be compensable was required to reduce the veteran's earning capacity by 10% or more. (Section 302 (2) of the War Risk Insurance Act, as amended by the Acts of October 6, 1917, c. 105, 40 Stat. 398, 408, and December 24, 1919, c. 16, 41 Stat. 371, 378.)

their insurance in view of the higher premium rate on the converted policy and the fact that their term insurance contracts afforded the same disability and death benefits as the converted contracts. Also, it was reasonable to presume that most of those who had converted their insurance despite disabilities were in a position to maintain it in force and had done so; and that of those who had allowed it to lapse comparatively few, in view of the larger premium rate, would be able to meet the requirement of the statute that the compensation due them but uncollected on the date of death or total permanent disability be in an amount sufficient to cover the entire sum of the unpaid premiums. It must have been anticipated that as time went on the number of cases meeting this condition would progressively diminish.[18]

(e) The Government's position is further supported by the legislative history of the provisions for limiting the continuance of yearly renewable term insurance and for the revival and continuance of insurance, respectively. This legislative history shows that Congress has from the beginning adopted the policy of providing that yearly renewable term insurance should be temporary in character and that the subsequently enacted provisions for revival, later embodied in Section 305, were en-

[18] A requirement far less likely to be met with respect to converted policies than with respect to term insurance. See footnote 13, *supra*.

acted in the light of that policy and were intended to be governed by the provisions establishing it.

(All of the sections of the World War Veterans' Act here involved had their inception in the War Risk Insurance Act, as amended, and in tracing the legislative history of these sections, as contained in the sections of the War Risk Insurance Act, the comparable sections of the World War Veterans' Act are indicated in brackets for the convenience of the Court.)

As stated in the opinion of the Circuit Court of Appeals for the Tenth Circuit on rehearing in *Shelton* v. *United States*, 88 F. 599, 603, which directly supports the Government's position, Congress from the outset placed a time limit upon the continuance of yearly renewable term insurance, but made no provision effective prospectively for the revival and continuance of lapsed insurance until more than five years later. Section 404 [Section 301] [10]

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[10] The similarity between these two sections of the respective Acts is readily apparent from a comparison of their terms. Each provided that "Not later than" a certain date "term insurance * * * *shall* be converted" into other forms of insurance, with an extension in favor of persons whose insurance matured by total permanent disability and who were found to be no longer so disabled after the limitation had expired. (Appendix, *infra*, pp. 47, 48.) In thus requiring conversion of the term insurance by a specified date, these provisions also placed a time limit by necessary implication upon the continuance of such insurance, which manifestly could not remain in force after that date. Therefore, the further provision in Section 301 (omitted in Section 404), that all such insurance "shall cease" on the date in question except where death or total permanent disability

containing such a time limitation, was first enacted in the War Risk Insurance Act of October 6, 1917. This section limited the duration of yearly renewable term insurance to a period of five years after the termination of the war.[20] (Appendix, *infra*, p. 43.) By the Act of August 9, 1921, the section was amended by adding a provision extending such time limitation in favor of persons whose insurance had matured by disability and who had later been found to be no longer disabled. (Appendix, *infra*, pp. 43–44.)

The original Act of October 6, 1917, made no provision for revival and continuance of insurance. Such provisions were enacted for the first time in Section 408 [Section 305][21] by the Act of August 9,

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of the insured shall have occurred meanwhile (Appendix, *infra*, p. 48), was evidently inserted merely for the purpose of making the preceding provision more explicit, and was not intended to give it a meaning different from that it already possessed.

[20] By the Act of July 2, 1921, c. 40, 42 Stat. 105, the termination of the war was declared to have occurred on July 2, 1921. By the Act of June 2, 1926, the date of the expiration of term insurance was fixed as July 2, 1927. (See Appendix, *infra*, p. 51a)

[21] Each of these sections provided that, upon certain conditions, the lapsed insurance (or, under Section 305, at least a part of it), "shall not be considered as lapsed," and payment thereof shall be made, less the premiums and interest thereon. (Appendix, *infra*, pp. 49–50.) The only differences between these sections were that Section 408 required as a condition to revival that there be sufficient uncollected compensation to pay all unpaid premiums, while Section 305 provided for revival of part of the insurance where the uncollected compensation was insufficient to revive the entire amount; that Section 305 added a provision, not contained

1921 (Appendix, *infra*, pp. 44–45), but were not made prospectively effective with respect to the death or total permanent disability of the insured until Section 408 [Section 305] was amended to that effect by the Act of March 4, 1923 (Appendix, *infra*, pp. 44–45)." Accordingly, when the provisions for revival and continuance of lapsed insurance were first made prospectively effective in 1923, Congress had already adopted a policy of placing a time limit upon the continuance of yearly renewable term insurance and that policy had continued for more than five years. If it were intended by the 1923 Act to make an exception to the policy thus adopted as to term insurance, by permitting the continuance of such insurance to a date of maturity by death or disability beyond that previously fixed for its termination under Section 404 [Section 301], it would seem reasonable to assume either that Section 408

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in Section 408, as to the rate to be adopted in computing the uncollected compensation, and omitted a provision which had been contained in Section 408 for the payment, under certain conditions, of insurance which the insured had been unsuccessful in reinstating after lapse; and that Section 408 contained provisions for reinstatement of insurance which were later incorporated with amendments in Section 304 of the World War Veterans' Act. (See Appendix, *infra*, pp. 53–54.)

" The Act of August 9, 1921, had provided for revival in cases where the insurance had been allowed to lapse while the insured was suffering from a compensable disability and "has since died." The Act of March 4, 1923, substituted in place of this phrase the words "dies or has died," thus giving the provision a prospective as well as a retroactive effect. (See Appendix, *infra*, pp. 44, 45.)

[Section 305] would have contained a provision to that effect, or that Section 404 [Section 301] would have been amended by adding another exception[**] to the one enacted by the Act of August 9, 1921. (Appendix, *infra*, pp. 43–44.) However, no such provision was made in either section, and neither of them was subsequently amended.

Furthermore, it is submitted that no such exception should be implied. To do so would necessarily involve an amendment by implication of Section 404 (Section 301) by Section 408 (Section 305), as amended by the Act of March 4, 1923 (Appendix, *infra*, pp. 44–45), since, as previously stated, Section 404 (Section 301) was in existence when that Act was passed, and the application of Section 408 (Section 305) to the revival and continuance of lapsed yearly renewable term insurance beyond the date fixed for its termination by Section 404 (Section 301) would manifestly have been inconsistent with the latter. The rule is well settled that implied amendments are not favored, and that an intention to amend will not be imputed unless the statutes involved admit of no other construction. *Rosencrans* v. *United States*, 165 U. S. 257, 262; *Frost* v. *Wenie*, 157 U. S. 46, 58; *Washington* v. *Miller*, 235 U. S. 422, 428; *United States* v. *Healey*, 160 U. S. 136, 147; *United States* v. *Bur-*

[**] Of course, no exception would have been necessary when Section 408 [Section 305] was first enacted in 1921, since it applied at that time only to cases where death had already occurred. (Appendix, *infra*, pp. 44, 45.)

roughs, 289 U. S. 159, 164. And this is especially true where, as here, such an amendment would involve the modification by implication of a well established policy embodied in an earlier and different section of the Act. *United States* v. *Munday*, 222 U. S. 175, 182; *Ibanez* v. *Hongkong Banking Corp.*, 246 U. S. 621, 626; *United States* v. *Madigan*, 300 U. S. 500, 506.

Moreover, the policy of limiting the continuance of yearly renewable term insurance was thereafter consistently adhered to in the repeated reenactments of the limitation provisions without incorporating any exception exempting the revival of such insurance therefrom, and in the reenactment of the revival provisions without embodying any provision for the revival of term insurance after the expiration of the time limit fixed by the limitation provision (Appendix, *infra*, pp. 47–53).

The legislative history further indicates that the provisions for revival and those for reinstatement (which were obviously subject to the statutory time limitation upon term insurance)[**] were intended to be coterminous in their application to such insurance. Those provisions were enacted at the same time and in the same section and were complementary to each other. Both relate to the restoration of the lapsed insurance of disabled veterans—the reinstatement provisions applying only when the veteran was less than totally permanently

[**] See discussion, *supra*, p. 21.

disabled; the revival provisions applying only in the event of total permanent disability or death. See Section 408, War Risk Insurance Act, as amended by the Act of August 9, 1921 and by the Act of March 4, 1923, Appendix, *infra*, pp. 44–45.

Furthermore, the legislative history of the Acts amending Sections 301 and 305 of the World War Veterans' Act, 1924, shows clearly that Congress has acquiesced in an administrative interpretation of these sections identical with the interpretation urged here, under circumstances which have amounted to a legislative adoption of that interpretation. Prior to the Act of June 2, 1926, which reenacted Section 301, with amendments to the provisions limiting the continuance of yearly renewable term insurance (Appendix, *infra*, pp. 51–52), the Director of the Veterans Bureau both by testimony and by letter had clearly disclosed to Congressional committees of both Houses that under his interpretation of the sections in question (which he presumably proposed to follow in administering them)[25], term insurance could not be revived under Section 305 after the date fixed for its termination in Section 301 (Appendix, *infra*, pp. 54–57). These committees were at that time considering bills purporting to amend Section 301 by extending the limitation on term insurance and to amend Section 305 by

[25] The question had not theretofore arisen for administrative decision, since the period of limitations under Section 301 as it then stood, had not yet expired. (Appendix, *infra*, p. 48.)

limiting the class of beneficiaries entitled to insurance revived under that section. Contrary to the assumption in the opinion of the court below (R. 58), the administrative interpretation was twice brought to the attention of Congress itself by its Committees—the letter from the Director, Veterans Bureau, being attached to the Committee Reports. (Appendix, *infra*, pp. 54–55.) In this connection, there is clearly no merit in the assumption of the court below that the Director's statements did "not purport to state an administrative practice" (R. 58.) While it is true that the statements did not relate to administrative practice in the past, they were manifestly disclosures of the Director's intention with respect to the practice in the future, and would seem, therefore, to have the same bearing on the question of legislative approval of the interpretation as would a statement of practice in the past. Thus Congress, although fully advised that the Director intended to administer Section 305 under an interpretation to the effect that it was limited as to yearly renewable term insurance by Section 301, reenacted the limitation provisions in Section 301 without change in that respect. (Act of June 2, 1926, Appendix, *infra*, pp. 51–52). Moreover, a month later Section 305 was also reenacted in its entirety, with certain amendments, none of which indicated any disagreement with the administrative interpretation and one of which limited the

class of beneficiaries of revived insurance, thus restricting the scope of the section. (Act of July 2, 1926, Appendix, *infra*, p. 52.)

Additionally, Congress, by the Act of May 29, 1928 (Appendix, *infra*, p. 52), again reenacted Section 301 with amendments, and amended Section 305, without disturbing the administrative interpretation, although *three months* prior to this Act a formal opinion of the General Counsel of the Veterans Bureau containing that interpretation had been adopted by the Director as the official interpretation of the provisions in question (Appendix, *infra*, pp. 58–62).[20] The interpretation, thus adopted, has been followed without modification in administering these sections for at least ten years, according to a certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, and his letter to the Solicitor General, dated June 9, 1938. (Appendix, *infra*, pp. 57–58, 62.) Meanwhile, Section 301 has been amended three times more without disturbing the administrative interpretation—including an amendment in 1937 which involved another reenactment of the entire paragraph containing the provision requiring conversion of yearly renewable term insurance by July 2, 1927. (See summary of Acts of July 3, 1930, June 24, 1932, and June 1, 1937, Appendix, *infra*, pp. 52–53.)

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[20] Consequently, the implication in the court's opinion (R. 58) that Congress could not have been aware of this official interpretation, is unwarranted.

Thus Congress, in the face of a long continued administrative interpretation of the sections in question, which was disclosed to it as early as 1926, and which was again set forth in an official opinion approved by the Director of the Veterans Bureau, has amended these sections frequently (including amendments which modified the time limitation upon yearly renewable term insurance in Section 301, and one which had the effect of limiting the amount of the Government's liabilities under Section 305) without disturbing that interpretation. Moreover, these amendments involved a reenactment of Section 305 and several reenactments of Section 301. It is submitted that this amounts to a legislative adoption of the interpretation, which should not be disturbed. *United States* v. *G. Falk & Brother*, 204 U. S. 143, 152; *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United States* v. *Hermanos y Compania*, 209 U. S. 337, 339; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500; *New Haven R. R.* v. *Interstate Com. Com.*, 200 U. S. 361, 401–402; *Komada* v. *United States*, 215 U. S. 392 396; *National Lead Co.* v. *United States*, 252 U. S. 140, 145–147; *Helvering* v. *Bliss*, 293 U. S. 44, 79; *Zellerbach Co.* v. *Helvering*, 293 U. S. 172, 179–180; *Taft* v. *Commissioner*, 304 U. S. 351, 357; *Lang* v. *Commissioner*, 304 U. S. 264, 270.

The administrative practice in this respect was disregarded by the court below because the court

(1) apparently considered that the certificate of the Administrator of Veterans' Affairs disclosing the long continued administrative practice was not a proper subject of judicial notice, and (2) therefore considered that a long continued administrative practice was not shown. (R. 58–59.) The certificate of the Administrator, clearly stating the practice, was filed in the court below annexed to a copy of the opinion of the General Counsel (which the court below mentions in its opinion), and both the opinion and the certificate appear in full in the Appendix to the brief which the Government filed there.

It cannot be doubted, of course, that the practice followed in administering the sections in question is a proper subject of judicial notice by this Court (*Caha* v. *United States*, 152 U. S. 211, 221–222; *New York Indians* v. *United States*, 170 U. S. 1, 32; *Thornton* v. *United States*, 271 U. S. 414, 420; *Helvering* v. *Bliss*, *supra*; *United States* v. *Madigan*, *supra*, p. 505; *Zellerbach Co.* v. *Helvering*, *supra*; *Taft* v. *Commissioner*, *supra*; *Lang* v. *Commissioner*, *supra*) in spite of the implied refusal of the court below to notice it (*deBearn* v. *Safe Deposit Co.*, 233 U. S. 24, 32). Such practice may be ascertained from any source which this Court deems trustworthy. *The Montello*, 11 Wall. 411, 414–415; *Brown* v. *Piper*, 91 U. S. 37, 42; *Jones* v. *United States*, 137 U. S. 202, 216. That the certificate of

the Administrator of Veterans' Affairs filed in the court below and his letter to the Solicitor General (Appendix, *infra*, pp. 57–62) constitute a source of this character would seem beyond question. This Court accepted a similar letter as establishing administrative practice in *United States* v. *Madigan*, *supra*, and it is to be assumed that the failure of the court below to notice the Administrator's certificate in the instant case was based solely upon a misconception that its contents were not within judicial knowledge.

(f) The court below relied upon the rule of construction that where two statutory provisions apparently contradict each other and one is general while the other is specific, the latter controls the former. (R. 55.) But we submit that this rule has no application in support of the court's conclusion for two reasons:

(1) As we have heretofore indicated, the provisions of Section 301 and Section 305 are not in contradiction to each other in any respect, but, on the contrary, are entirely harmonious in themselves and in respect of other pertinent provisions of the statute.

(2) If, however, contrary to our view, it be considered that there is conflict between Sections 301 and 305, the provisions of the former must control, since they are special provisions embodying a definite policy toward the temporary insurance granted in yearly renewable contracts, while those in Sec-

tion 305 are general provisions for the revival of all forms of lapsed insurance. *Skelton* v. *United States*, 88 F. (2d) 599 (C. C. A. 10th); *Missouri* v. *Ross*, 299 U. S. 72, 76.

The court below relied in this connection on *Townsend* v. *Little*, 109 U. S. 504, 512. (R. 55, 57.) But it is submitted that the opinion in that case, and especially the portion thereof quoted in the opinion below (R. 55), strongly supports the contention of the Government on this point. It was there held that a deed executed by a mayor of a city, although without witnesses as required by the general law, nevertheless conveyed legal title in view of the statute providing for deeds of conveyance by mayors which merely required execution under the corporate seal. It is said in effect by this Court in the portion of the opinion quoted below (R. 55) that the statute relating to deeds of conveyance by mayors was a "provision for the execution of a particular class of deeds", and was "not controlled by the law of the territory requiring deeds generally to be executed with two witnesses." Applying this language to the case at bar, we submit that the provisions of Section 301 of the World War Veterans' Act limiting the continuance of a particular class of insurance (i. e., yearly renewable term) are not to be controlled by the provisions of Section 305 of that Act for the revival and continuance of veterans' insurance generally.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

ROBERT H. JACKSON,
Solicitor General.
JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
FENDALL MARBURY,
Special Assistants to the Attorney General.
W. MARVIN SMITH,
Attorney.

NOVEMBER 1938.

APPENDIX

The first authority to grant war risk insurance is contained in the Act of October 6, 1917, c. 105, Sec. 2, 40 Stat. 398, 409–410, amending the War Risk Insurance Act by adding the following section, among others:

> SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two, and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, * * *

The Act of August 9, 1921, c. 57, Sec. 24, 42 Stat. 147, 155, amended Section 404 by adding the following provisions:

> In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended be-

yond the five-year period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to convert said term insurance as hereinbefore provided.

The Act of August 9, 1921, *supra*, also added Section 408 to the War Risk Insurance Act, which, as amended by the Act of March 4, 1923, c. 291, Sec. 7, 42 Stat. 1521, 1525–1526, provided in part:

> SEC. 408. In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with in-

terest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy; *Provided further*, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his [said policy] *insurance* to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and [has since died] *dies or has died* from said wounds or disease, *or becomes or has become permanently and totally disabled by reason thereof*, without collecting [or making claim for] said compensation [or being allowed to reinstate his said policy on account of his physical condition], *and at the time of such death or permanent total disability had or has sufficient uncollected compensation to pay all unpaid premiums*, then and in that event said policy shall not be considered as lapsed, and the *United States* Veterans' Bureau is hereby authorized and directed to pay to the *said soldier or his* beneficiaries [of said soldier] under said policy the amount of said insurance, less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *. [Italics represent words added by the amendatory Act. Words in the prior Act, omitted by amendment, are enclosed in brackets.]

Bulletin No. 1 (Regulations and Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1233–1235) was promulgated by the Director of the Bureau of

War Risk Insurance, Treasury Department, on October 15, 1917, and provides, in part, as follows:

I, William C. DeLanoy, Director of the Bureau of War Risk Insurance in the Treasury Department, pursuant to the provisions of section 402 of an act "to amend 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, hereby, on this 15th day of October, 1917, by direction of the Secretary of the Treasury, determine upon and publish these full and exact terms and conditions of the contract of insurance to be made under and by virtue of the act:

1. Insurance will be issued for any of the following aggregate amounts upon any one life:

* * * * *

which installments will be payable during the total and permanent disability of the insured, or if death occur without such disability, for 240 months, or if death occur following such disability, for a sufficient number of months to make 240 in all including months of disability already paid for, in both cases except as otherwise provided.

2. The insurance is issued at monthly rates for the age (nearest birthday) of the insured when the insurance goes into effect, increasing annually upon the anniversary of the policy to the rate for an age one year higher, as per the following table of rates:

* * * * *

The insurance may be continued at these increasing term rates during the war and for not longer than five years after the termination of the war, and may be continued thereafter without medical examination if the

policy be converted into a form selected before the expiration of such five years by the insured from the forms of insurance which will be provided by the bureau, provided that premiums are paid therefor at net rates computed by the bureau according to the American experience table of mortality and interest at 3½ per cent per annum.

The War Risk Insurance Act was repealed by Sections 600 and 601 of the World War Veterans' Act, June 7, 1924, c. 320, 43 Stat. 607, 629–630. Section 601 provided:

> That the following Acts are hereby repealed. The sections of this codification herein applicable thereto shall be in force in lieu thereof, subject to the limitations contained in this title.
>
> (1) The War Risk Insurance Act as amended.
>
> • • • • •

Section 602 provided:

> The repeal of the several Acts as provided in sections 600 and 601 hereof shall not affect any act done or any right or liability accrued, or any suit commenced before the said repeal, but all such rights and liabilities under said Acts shall continue and may be enforced in the same manner as if said repeal had not been made: • • •

Provisions limiting yearly renewable term insurance as to time, and provisions for revival of lapsed insurance, were reenacted in Sections 301 and 305, respectively, of the World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 624, 626, which provided (words in italics were added by the later Act to the provisions as formerly enacted in the

corresponding sections of the War Risk Insurance Act. (Words in the former Act omitted in the later act, are enclosed in brackets):

SEC. 301. [During the period of the war and thereafter until converted, the insurance shall be term insurance for successive terms of one year each.] Not later than [five years after the date of the termination of the war as declared by proclamation of the President of the United States the] *July 2, 1926, all* term insurance *held by persons who were in the military service after April 6, 1917,* shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and into other usual forms of insurance, and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured of be otherwise made at his election.

All term insurance shall cease on July 2, 1926, except when death or total permanent disability shall have occurred before July 2, 1926.

In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the [five-year] period during which said yearly renewable term insurance other-

wise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to convert said term insurance as hereinbefore provided.

[That] The bureau [of War Risk Insurance] may make provision in the contract for converted insurance for optional settlements, to be selected by the insured, whereby such insurance may be made payable either in one sum or in installments for thirty-six months or more. The bureau may also include in said contract a provision authorizing the beneficiary to elect to receive payment of the insurance in installments for thirty-six months or more, but only if the insured has not exercised the right of election, as hereinbefore provided; and even though the insured may have exercised his right of election, the said contract may authorize the beneficiary to elect to receive such insurance in installments spread over a greater period of time than that selected by the insured.

SEC. 305. [That] Where any [soldier] *person* has heretofore allowed his insurance to lapse while suffering [from wounds or disease suffered or contracted in line of service, and was at the time he allowed his insurance to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and dies or has died, from said wounds or disease, or becomes or has become permanently and totally disabled by reason thereof, without collecting said compensation, and at the time of such death or permanent total disability had or has suf-

ficient uncollected compensation to pay all unpaid premiums] *from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected*, then and in that event [said policy] *so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by Section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due*, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to [the] said soldier, or his beneficiaries [under said policy] *as the case may be* the amount of said insurance less the *unpaid* premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law. [*Provided further*, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease contracted in line of service, and has applied for reinstatement thereof in whole or in part, and where at the time of such application he was not totally and permanently disabled, and where he was not allowed to reinstate because of health condition other than total permanent disability, and where said soldier has since died from said wounds or disease or has become permanently and totally disabled by reason thereof, then and in that event the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier or his beneficiaries the amount of insurance attempted to be reinstated less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.]

The Act of March 4, 1925, c. 553, Sec. 13, 43 Stat. 1302, 1309, reenacted Section 301 in its entirety and added two paragraphs authorizing the insertion of certain provisions in the insurance contract, prescribing the basis for calculating benefits, authorizing change of beneficiaries, and providing for the disposition of the insurance proceeds in certain contingencies. The section was made effective as of June 7, 1924.

The Act of June 2, 1926, c. 449, 44 Stat. 686, reenacted Section 301 as previously amended with further amendments which designated as "yearly renewable" the original term insurance which in previous acts had been referred to merely as "term insurance";[1] extended the time limitation upon the continuance of such insurance to July 2, 1927, and provided for further extensions in cases where conversion of such insurance was impracticable or impossible because of the mental condition or disappearance of the insured; added "five year level premium term" to the forms into which the original yearly renewable term insurance might be converted; provided for reconversion of policies to a higher premium rate, and permitted the temporary

[1] This new designation was no doubt made because the original term insurance continued for terms of only one year at a time, being automatically renewed at the end of each year at the higher premium rate for the attained age of the insured (see Treasury Bulletin No. 1, October 15, 1917, containing terms of the original contract, Appendix, *supra*, pp. 45, 46); and also because this designation provided a means of distinguishing this type of term insurance from the converted term insurance known as "five year level premium term", which was added by this Act to the forms into which the original insurance might be converted.

accumulation of monthly benefit payments by the Director in certain cases. The section was made effective as of June 7, 1924.

The Act of July 2, 1926, c. 723, Sec. 16, 44 Stat. 790, 799, reenacted Section 305 with amendments providing cancellation and reduction (in addition to lapse) of insurance as an alternative condition to its revival, and limiting the class of beneficiaries of insurance to be revived after the passage of the Act.

The Act of May 29, 1928, c. 875, Sections 14 and 17, 45 Stat. 964, 968, 971, amended Sections 301 and 305. It reenacted Section 301 with amendments relating to reconversion of insurance into other forms of converted insurance and altering the terms of the prior provision for distribution of the proceeds of converted insurance where no beneficiary has been designated. The section, as amended, was made effective as of June 7, 1924. Section 305 was amended by adding a provision that compensation uncollectible under certain provisions of the law shall be considered as uncollected for the purposes of Section 305.

The Act of July 3, 1930, c. 849, Sec. 22, 46 Stat. 991, 1001, reenacted with amendments two paragraphs of Section 301, making the provisions allowing additional time for conversion of yearly renewable term insurance applicable to reinstatement, and authorizing the insertion in the converted policy of a provision for refund of premiums.

The Act of June 24, 1932, c. 276, 47 Stat. 334, amended the first paragraph in Section 301 (containing the provision requiring conversion of

yearly renewable term insurance by July 2, 1927), by adding a provision permitting the renewal of five-year level premium term policies of converted insurance.

The Act of June 1, 1937, c. 285, 50 Stat. 241, reenacted the same paragraph of the section in its entirety with amendments making further provision for renewing five-year level premium term policies.

Section 304 of the World War Veterans' Act, 1924, as amended, as contained in U. S. C., Title 38, Sec. 515, provides:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) made after June 7, 1924, may be approved if made within one year after July 2, 1926, or within two years after the date of lapse or cancellation: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the Administrator of Veterans' Affairs showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the re-

reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further*, That where, within one year after July 2, 1926, all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with, except the payment of unpaid premiums with interest, and proof satisfactory to the Administrator of Veterans' Affairs is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further*, That except as provided in section 512 [Section 301 of the World War Veterans' Act, 1924] of this title, no yearly renewable term insurance shall be reinstated after July 2, 1927.

Copies of the following letter from the Director of the United States Veterans' Bureau to the Chairman of the House Committee on World War Veterans' Legislation were attached to the Committee Report (H. Rep. No. 515, 69th Cong., 1st Sess.), made on March 11, 1926, in connection with a bill (H. R. 10240) to amend Sections 301 and 305 of the World War Veterans' Act, 1924, and to the

Report of the same Committee (H. Rep. No. 1217, 69th Cong., 1st Sess.), made on May 14, 1926, in connection with a substitute bill (H. R. 12175):

UNITED STATES VETERANS' BUREAU
Washington, March 10, 1926.

HON. ROYAL C. JOHNSON,
Chairman House Committee on
World War Veterans' Legislation,
House of Representatives,
Washington, D. C.

MY DEAR MR. JOHNSON:

* * * * * *

Section 15 amends section 301 to provide for the continuation of term insurance for a period of three years. The chief effect of such a continuation would be the increased cost due to the continued application of section 305, *assuming that section 305 under the present law is not effective subsequent to July 2, 1926.* Based upon current experience, the amount of term insurance which might be brought in under section 305 by the continuation of the term-insurance provisions for another three years is estimated at $105,039,900. Payment on this insurance would continue over approximately 20 years, accumulating each year as follows: First year, $5,252,000; Second year, $10,504,000; Third year, $15,756,000. [Italics supplied.]

Section 18 amends section 305 by limiting the class of beneficiaries. The above estimate of costs due to the continuation of term insurance through the amendment of section 301 can, therefore, be discounted by 45 per cent, with the resultant value of insurance which might be brought in totaling $57,771,945. Through this limitation there results, therefore, a material saving each year as fol-

lows: First year, $2,362,000; Second year, $4,724,000; Third year, $7,086,000. Net cost of extension of term insurance:

First year, $2,890,000; Second year, $5,780,000; Third year, $8,670,000.

* * * * *

FRANK T. HINES, *Director.*

When H. R. 12175, *supra*, was before the Senate Committee on Finance, the Director of the Veterans' Bureau testified before that Committee on May 24, 1926, as follows:

Section 17 amends Section 304 and provides for the extension of term insurance for one year. The chief effect of the continuation of term insurance will be the cost of the cases revived under Section 305, *assuming that Section 305 under the present law is not effective for cases dying or becoming permanent total subsequent to July 2, 1926, and further assuming that the application of Section 305 will not be effective under this provision for cases dying or becoming permanent total subsequent to July 2, 1927.* Based upon current experience the term insurance which might be brought in under Section 305 by continuation of term insurance for one year will cost annually, at the rate of $57.50 per month for $10,000, approximately $1,839,540; however, Section 18 amends Section 305 by limiting the class of beneficiaries for insurance revived under Section 305 to the widow, child, or parent. It is, therefore, believed that the above estimate of cost due to the continuation of term insurance can be discounted by 45 percent, with the resultant annual saving of approximately $827,780. The net cost of continuation of term insurance for a period of one

year would, therefore, be approximately $1,011,760. [Italics supplied.]

(Hearings before the Senate Committee on Finance on H. R. 12175, May 24, 1926, p. 13.)

Neither H. R. 10240 nor H. R. 12175 were enacted into law. The former, after a favorable Committee Report (H. Rep. 515, *supra*) was tabled in the House (Cong. Rec., Vol. 67, p. 9686). The latter, although it passed the House (Cong. Rec. Vol. 67, p. 9563) and reached the Senate Finance Committee (Cong. Rec. Vol. 67, p. 9610), which held hearings on it, was superseded by S. 3997, which became the Act of June 2, 1926 (Cong. Rec. Vol. 67, p. 9970).

The following certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, and a copy of the opinion of the General Counsel of the Veterans' Bureau, approved by the Director of the Bureau on February 27, 1928, were filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit in the instant case:

UNITED STATES OF AMERICA,
VETERANS' ADMINISTRATION,
September 24, 1937.

I hereby certify that the annexed photostats are those of an opinion rendered by the former General Counsel of the Veterans' Bureau on February 23, 1928, addressed to me as Director of said Bureau, to constitute a precedent for the administrative construction of Section 305 of the World War Veterans' Act, 1924, as amended. I further certify that said opinion was approved by me as Director on February 27, 1928, and was followed administratively by the Veterans'

Bureau, has not been modified, and is still applied as the administrative practice of the Veterans' Administration.

In witness whereof, I have hereunto set my hand, and caused the seal of the Veterans' Administration to be affixed on the day and year first above written.

[SEAL.] (Signed) FRANK T. HINES,
Administrator of Veterans' Affairs.

UNITED STATES VETERANS BUREAU,
Date: February 23, 1928.

LL-34

Memorandum from: The General Counsel.
To: The Director.
Subject: Cherniavsky, Morris, XC-400,962.

The Adjudication Service has presented this case for an opinion and as the establishment of a precedent is involved the opinion is referred to you for your approval.

The Adjudication Service has prepared the following summary of facts:

"This man executed an application for insurance while in service, but allowed this insurance to lapse for non-payment of the premium due September 1, 1919. The man had been discharged on August 22, 1919, and, following his discharge, he executed an application for compensation, on which application he has been rated as being disabled in various degrees until the date of his death on July 20, 1927. At the time of the lapse of the insurance his disability was of a compensable degree.

"Following his death, it was determined that while he had been rated less than 10 per cent disabled from August 9, 1924, as an actual fact he was temporarily partially 62 per cent disabled from that date to November 3, 1924, less than 10 per cent from that

date to July 1, 1926, and entitled to the statutory award for arrested tuberculosis in the amount of $50 monthly from July 2, 1926, to July 20, 1927.

"You will note that this claimant was not permanently and totally disabled at any time prior to his death, which occurred on July 20, 1927, and therefore the question is herewith presented to your Service whether a claimant who dies subsequent to July 2, 1927, and who was not permanently and totally disabled at any time prior thereto, comes within the provisions of Section 305 of the World War Veterans' Act as amended, if there is compensation due and unpaid for a period prior to the date of his death."

The question is whether Section 305 of the World War Veterans' Act, as amended, has application to term insurance where there has been neither permanent and total disability nor death at any time prior to July 2, 1927, the ending date for term insurance.

Section 304, World War Veterans' Act (last proviso), is to the effect that no yearly renewable term insurance shall be reinstated after July 2, 1927. The second paragraph of Section 301, World War Veterans' Act, as amended, provides in substance that all yearly renewable term insurance shall cease on July 2, 1927, except where death or total permanent disability shall have occurred before that date with the proviso that the Director may extend the time for continuing yearly renewable term insurance where on July 2, 1927, conversion is impracticable or impossible by reason of mental condition or disappearance of the insured.

Section 305 of the World War Veterans' Act, as amended, of course, has application

both to term and converted insurance and is to the effect that where any person has heretofore allowed his insurance to lapse or has canceled or reduced any or all of the insurance, and where the other requirements of Section 305 have been met such insurance shall not be regarded as having lapsed.

It may be noted generally that government insurance, both term and converted, may be discontinued (a) either by the government or (b) by the insured. The insured may end his insurance in whole or in part by some affirmative act such as cancellation or reduction or by failure to act, as where the insurance lapses for failure to pay premiums. The provisions of Section 305, World War Veterans' Act and for that matter the provisions of Section 408 of the War Risk Insurance Act deal with cases where the insured has discontinued his insurance, whereas the last proviso of Section 304, World War Veterans' Act, and the second paragraph of Section 301, World War Veterans' Act, deal with the discontinuance of the insurance through some act of the government.

In the present case the term insurance lapsed prior to July 2, 1926, through failure of the insured to pay premiums, and at the time of the lapse of the insurance his disability was of a compensable degree. Further, there was uncollected compensation at the date of lapse. Therefore, it would appear normally that the first proviso of Section 305 has been met. The second requirement of Section 305 is that there should have been uncollected compensation due at the maturity of the insurance, either through permanent and total disability or through death. In the present case the death was after July 2, 1927, and there was

no permanent and total disability prior to July 2, 1927. Therefore, assuming that there was uncollected compensation at the date of lapse so that the first requirement of Section 305 has been met, if an attempt be made to apply that Section in the present case the insurance would be prevented from lapsing up to July 2, 1927, at which time the term insurance by act of the Government was ended. Clearly in this case the term insurance did not mature before July 2, 1927, so that it cannot be said that the case would be covered by this language in paragraph 2 of Section 301 "except where death or permanent total disability shall have occurred before July 2, 1927." Neither, on the assumption that Section 305 might be applied to carry the term insurance to July 2, 1927, can it be said that there are grounds for continuing the term insurance after the dead line because there is nothing to show that conversion was impracticable or impossible because of the mental condition or disappearance of the insured.

Having in mind the fact that from the very beginning of war risk legislation it has been clearly understood that the yearly renewable term insurance was temporary in its nature and subject to ultimate termination by the government; and having in mind that from a relatively early date Congress has seen fit to declare that term insurance could not be carried beyond a specified date, which date has been extended from time to time; and having in mind that the final extension expired under the present act, July 2, 1927, it is the opinion of this Service that Section 305 cannot be applied to prevent the lapse of term insurance where there was neither

death nor total permanent disability before July 2, 1927.

(Signed) WILLIAM WOLFF SMITH.

Director's Office, Feb. 27, 1928.
Approved: F. T. H., Director.

In a letter dated June 9, 1938, to the Solicitor General, the Administrator of Veterans' Affairs stated in part:

> It is noted from the opinion of the Court in the McClure case that the Government relied on the Administrative practice and brought to the attention of the Court the opinion of a former General Counsel in the case of Morris Cherniavsky, XC-400,962, February 22, 1928 (50 C. C. 413). The Court evidently thought that this was an isolated case and apparently was not aware of the fact that it was a precedent forming opinion on which an Administrative policy has rested of more than ten years' duration. * * *[1]

In a letter dated November 14, 1938, to the Solicitor General from the Administrator of Veterans' Affairs, it is said:

> This is in reference to your inquiry relative to the matter of the procedure of the Veterans Administration after the discontinuance of the payments of insurance benefits based upon a finding of recovered ability to follow continuously some substantially gainful occupation, in cases where the insurance benefits have been awarded under the provisions of Section 305 of the World War Veterans Act, as amended.

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[1] The entire letter (with the exception of the part quoting the opinion of the General Counsel of the Veterans Bureau) appears in the Appendix to the Petition for a Writ of Certiorari, pp. 26–30.

In accordance with the provisions of the third paragraph of Section 301, World War Veterans Act, as amended, Section 3141, Veterans Regulations and Procedure provides that: "When an insured under yearly renewable term insurance is receiving insurance benefits on account of a total and permanent disability award and such award is terminated, the insured may, if he so desires, renew the payment of premiums on the reduced amount of term insurance (the commuted value of the remaining unpaid installments)."

The practice of the Veterans' Administration in respect of Section 305 cases has always been in accordance with the procedure stated above. A similar provision is contained in all policies of United States Government life insurance, the provision in these policies being to the effect that upon failure of the insured to furnish proof of continued permanent and total disability, all payments of monthly installments on account of such total permanent disability shall cease and all premiums thereafter falling due shall be payable in conformity with the policy.

As an example of the action taken in cases where payments have been awarded under the provisions of Section 305 of the World War Veterans Act, as amended, and such payments have been discontinued on account of a finding of recovered ability to follow continuously some substantially gainful occupation, there is cited the case of Joseph T. Wargo, C–1,001,240, in which the facts are as follows:

Mr. Wargo, while in the military service, was granted yearly renewable term insurance in the amount of $10,000. He was hon-

orably discharged January 27, 1919 and the premiums on this insurance were paid to include the month of January 1919. Effective February 1, 1919, he reduced his insurance to $5,000 and paid premiums on this amount to include the month of August 1919. This $5,000 insurance lapsed for nonpayment of the premium due September 1, 1919.

Mr. Wargo filed an application for benefits under his yearly renewable term insurance and on February 18, 1932, the Insurance Claims Council rendered a decision to the effect that for insurance purposes he had been permanently and totally disabled from May 2, 1923. Upon review of the compensation records, it was found that the veteran had been entitled to compensation remaining uncollected at the date of the lapse of his insurance (i. e. September 1, 1919) and that on the commencing date of his permanent and total disability, May 2, 1923, he was entitled to uncollected compensation in the sum of $113.89, which was sufficient to cover the premiums on $3,845.00 yearly renewable term insurance from September 1919 to May 1923, both months inclusive. Interest on these premiums at 5 per cent compounded annually to May 2, 1923 amounted to $10.80, making a total indebtednes under the provisions of Section 305 of the World War Veterans Act in the amount of $123.69. After the deduction of these premiums and interest, there remained net insurance in the amount of $3,721.31, which was awarded to the veteran in monthly installments of $21.40 each commencing May 2, 1923.

A regular review of this case was made by the Insurance Claims Council on April 14, 1933, when a decision was rendered finding that the evidence showed that the veteran

had regained the ability to follow continuously some substantially gainful occupation and was therefore no longer permanently and totally disabled. Pursuant to this decision, the payments of insurance benefits were discontinued with the installment which was mailed to Mr. Wargo on April 2, 1938.

Under the award of insurance benefits in this case, the veteran had received 180 installments of the insurance, and it was determined that he was entitled to continue the present cash value of the 60 remaining installments in force by the payment of premiums. The value of these remaining installments was $1,220.00, on which the veteran has paid the premiums to include the month of December 1938.

Very truly yours,

(s/s) FRANK T. HINES,
Frank T. Hines,
Administrator.

Incl.

U. S. GOVERNMENT PRINTING OFFICE: 1938